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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH BARAJAS,

Defendant and Appellant.

F061549

(Super. Ct. No. BF128174B)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

Gregory Chappel, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Wiseman, Acting P.J., Levy, J., and Kane, J.

A jury convicted appellant, Joseph Barajas, of two counts of first degree robbery in an inhabited dwelling (Pen. Code, §§ 211, 212.5, subd. (a);<sup>1</sup> counts 3, 4) and assault with a deadly weapon (§ 245, subd. (b); counts 6, 7), and a single count of each of the following offenses: first degree burglary (§§ 459, 460, subd. (a); count 5); false imprisonment of an elder adult (§ 368, subd. (f); count 8); theft from an elder adult (§ 368, subd. (d); count 9); false imprisonment (§ 236; count 10); resisting arrest by use of force (§ 69; count 12); and active participation in a criminal street gang (§ 186.22, subd. (a); count 13). The jury found true enhancement allegations of the following: appellant was a principal, and a principal who personally used a firearm, in the commission of the offenses charged in counts 3 and 4 (§ 12022.53, subds. (b), (e)(1)); a principal was armed with a firearm in the commission of the offenses charged in counts 3, 4 and 5 (§ 12022, subd. (a)(1)); and appellant acted for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further or assist in criminal conduct by gang members in committing the offenses charged in counts 3 through 10, inclusive (§ 186.22, subd. (b)(1)).<sup>2</sup> The jury acquitted appellant of two counts of first degree robbery in an inhabited dwelling in concert with two or more persons (§§ 211, 213, subd. (a)(1)(A); counts 1, 2.)

The court imposed a prison term of 20 years eight months, consisting of the following: the six-year upper term on the count 3 robbery; 10 years on the count 3 section 12022.53, subdivisions (b), (e)(1) enhancement; 16 months on the count 4 robbery, representing one-third of the midterm for that offense; and three years four

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<sup>1</sup> All statutory references are to the Penal Code.

<sup>2</sup> We refer to the section 186.22, subdivision (b) enhancement as the gang enhancement. We refer to the substantive offense defined in section 186.22, subdivision (a) as the gang offense.

months on the count 4 section 12022.53, subdivisions (b), (e)(1) enhancement, representing one-third of the midterm for that enhancement. The court also imposed a concurrent three-year term on count 12. Finally, the court imposed, and stayed pursuant to section 654, the following: on the substantive offenses, terms of six years on count 5, nine years on each of counts 6 and 7, four years on each of counts 8 and 9, and three years on each of counts 12 and 13; on the gang enhancements, 10 years on count 3, three years four months on count 4, five years on each of counts 5, 6 and 7, and four years on each of counts 8, 9 and 12; and on the section 12022, subdivision (a)(1) enhancements, one year on each of counts 3 and 5, and four months on count 4.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant, apparently in response to this court's invitation to submit additional briefing, has submitted a brief in which he challenges the sufficiency of the evidence supporting the gang enhancement and the count 13 gang offense. We affirm.

## **FACTS**

### ***The Instant Offenses***

For a period of roughly six months, approximately 10 to 12 years prior to the trial, appellant lived with David and Barbara Prince as a foster child.<sup>3</sup> David is a gun collector and has a gun safe in his house; appellant was aware, when he lived with the Princes, that David had guns. Appellant's foster child relationship with the Princes ended when, at about age 15, he decided he no longer wanted to live with the Princes and moved back to Los Angeles.

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<sup>3</sup> For the sake of brevity and clarity, and not out of disrespect, we refer to David and Barbara Prince by their first names.

On April 26, 2009 (April 26), David was 72 years old. He was at home that day, in the kitchen, when a person both David and Barbara later identified as Zeus Sanchez entered the house through an open door, put a gun to David's head, grabbed him by the back of the shirt, and ordered him to get down on the floor. David complied. Barbara, who was in another room, heard Sanchez, at which point she turned and saw him. He pointed the gun at her and told her to get down on the floor; she too complied. David testified Sanchez said that "he had his boys in the house," they were "going through the house," and "they wouldn't be there very long." Barbara could hear what sounded like someone opening drawers and ransacking the house. She testified that Sanchez "made several references to other people in the house ...." Barbara also testified that Sanchez "tried to take" rings she was wearing, but she "told him to stop and not touch [her]" and took the rings off herself.

At some point thereafter, Sanchez asked David where the guns were. David told him they were in a safe in the garage. Sanchez grabbed David by the shirt, got him to his feet, and, pointing the gun at David, walked him to the garage. There, Sanchez demanded that David open the safe, but David told him the safe belonged to his son and he did not have the combination. At that point, David testified, Sanchez became "upset" and "started bouncing [David] off the safe or off the garage door wall." Sanchez then grabbed David by the back of the neck and, holding the gun to David's head, walked him back to the kitchen.

While David and Sanchez were in the garage, Barbara noticed that her cell phone was lying on a table in the living room. She grabbed the phone and called 911.

Sanchez and David returned to the kitchen, at which point Sanchez made David and Barbara lie face down on the ground and tied their hands with an electrical cord. At that point, Sanchez made a call on a cell phone, and, Barbara testified, stated that "they

were done and it was time to go.” Sanchez then left the room, and shortly thereafter, the Princes heard the front door close.

On April 26, City of Bakersfield police officers went to the Princes’s home in response to a report of a home invasion robbery. As officers approached the house, Zeus Sanchez came out of the house and began running. Officers ordered Sanchez to stop, he did so, and as he was raising his arms in response to a directive from the officers, a loaded semi-automatic pistol fell from the area of his waistband onto the ground. Officers took Sanchez into custody.

Officer Sean Underhill saw Sanchez being taken into custody, and shortly thereafter, saw appellant walk out the front door of the house. Appellant began walking away but when he saw police cars, he turned and began running. Officers gave chase, apprehended appellant and, after a struggle, succeeded in taking him into custody. Officer Underhill searched appellant’s pockets and, in appellant’s front pants pocket, found David’s wallet.

After officers took appellant and Sanchez into custody, a duffel bag belonging to David, filled with items belonging to him, was found in the family room.

### ***Gang Evidence***

City of Bakersfield Police Officer Paul Yoon, after testifying to his training and experience as related to the “recognition of criminal street gangs,” testified to the following: The Sureños is a criminal street gang with approximately 145,000 members in California. The gang “identif[ies]” with certain symbols, including the letter “M,” which “signifies the Mexican Mafia.” The “primary activities” of the gang include “weapons violations,” aggravated assaults and residential robberies.

Members of the Sureno gang had engaged in a pattern of criminal gang activity<sup>4</sup> as follows: Andrew Anaya was an active member of the Sureno gang when, in 2007, he was found in possession of a firearm, and was subsequently convicted of possession of a firearm by a felon (§ 12021, subd. (a)(1)). Officer Yoon opined that Anaya committed the offense “for the benefit of, in furtherance of, or in association with” the Sureno gang. In addition, Gonzalo Bravo was convicted of assault with a deadly weapon based on events occurring in December 2006. Officer Yoon opined that Bravo was, at that time, an active member of the Sureno gang and that he committed that offense “for the benefit of, in furtherance of, or in association with” the Sureno gang.

According to police records, appellant had four contacts with police during which he was in the company of Sureno gang members, and, on one of these occasions, appellant admitted he was a member of a certain “subset” of the Sureno gang. Following his arrest in the instant case, appellant told jail officials that he could not be housed in a particular unit of the jail because he was a member of the Sureno gang. Based in part on the foregoing, Officer Yoon opined that appellant was an active member of the Sureno gang.

In response to a detailed hypothetical question that tracked the facts of the instant case, Officer Yoon opined as follows: Such an offense would have been committed “[for] the benefit ... and in association [with] the Sureno criminal street gang.” Committing such a crime helps the perpetrators “gain status within their gang.” In

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<sup>4</sup> A group, in order to satisfy the definition of a “criminal street gang,” must “include[] members who either individually or collectively have engaged in a ‘pattern of criminal gang activity’ by committing, attempting to commit, or soliciting two or more of the enumerated offenses (the so-called ‘predicate offenses’) during the statutorily defined period.” (*People v. Gardeley* (1996) 14 Cal.4th 605, 617, italics omitted, § 186.22, subds. (e), (f).)

addition, “obtaining firearms” is “how [gang members] make their money” and “helps them continue their gang lifestyle and ... further their criminal objectives.”

## **DISCUSSION**

Appellant argues the evidence was insufficient to support his conviction on the substantive gang offense and the true findings on the gang enhancement allegations. As best we can determine, appellant’s claim is that the prosecution failed to meet its burden of proof because it did not prove appellant was a *member* of a criminal street gang. There is no merit to this contention.

“When a defendant challenges the sufficiency of the evidence [supporting a conviction], “[t]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.]’ [Citations.] ... We ““presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.”” [Citation.]” (*People v. Clark* (2011) 52 Cal.4th 856, 942-943.) We apply the same standard in determining the sufficiency of the evidence supporting an enhancement. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60 (*Albillar*).)

Gang *membership* is an element of neither the substantive gang offense nor the gang enhancement. “[T]he elements of the gang offense are (1) active participation in a criminal street gang, in the sense of participation that is more than nominal or passive; (2) knowledge that the gang’s members engage in or have engaged in a pattern of criminal gang activity; and (3) the willful promotion, furtherance, or assistance in any felonious criminal conduct by members of that gang.” (*Albillar, supra*, 51 Cal.4th at p. 56.) And, in order to establish the gang enhancement, the prosecution must prove the underlying crime was “[1] committed for the benefit of, at the direction of, or in association with any

criminal street gang, [2] with the specific intent to promote, further, or assist in any criminal conduct by gang members....” (§ 186.22(b)(1).) When we review the record in light of the principles of judicial review summarized above, we conclude the evidence was sufficient to establish each element of both the gang offense and the gang enhancement.<sup>5</sup>

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

### **DISPOSITION**

The judgment is affirmed.

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<sup>5</sup> We note that in any event, Officer Yoon’s expert opinion testimony that the Surenos was a criminal street gang and that appellant was a member of that gang—an opinion based in part on evidence that appellant had admitted being a Sureno member on two occasions—was sufficient to establish appellant was a member of a criminal street gang.